



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Paper No.

SEED INTELLECTUAL PROPERTY LAW GROUP PLLC  
701 FIFTH AVE  
SUITE 5400  
SEATTLE WA 98104

**MAILED**  
**APR 19 2011**  
**OFFICE OF PETITIONS**

In re Application of	:	
Palay et al.	:	
Patent No. 7,868,873	:	ON APPLICATION FOR
Issue Date: 01/11/2011	:	PATENT TERM ADJUSTMENT
Application Number: 10/598,460	:	
Filing Date: 08/31/2006	:	
Attorney Docket Number:	:	
940131.413USPC	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(d)" filed on March 7, 2011. Patentees request that the patent term adjustment be increased from 582 days to 947 days. For the reasons stated below, the petition is treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred forty-five (945) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by nine hundred forty-five (945) days is **GRANTED to the extent indicated herein**

On January 11, 2011, the subject application issued as U.S. Patent No. 7,868,873, with a patent term adjustment of 582 days. On March 7, 2011, the subject request for reconsideration was timely filed.

Patentees assert entitlement to a period of adjustment of 383 days pursuant to 37 CFR 1.705(b).

The "B" delay period is 382 days, not 383 days as asserted by patentee. 37 CFR 1.702(b) states that the period of adjustment

under 35 U.S.C. 154(b) is the period beginning three years after the date on which an application was filed under 35 U.S.C. 111(a), or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application. This application was filed pursuant to 35 U.S.C. 371(b), not under 35 U.S.C. 111(a).

The calculation of delay pursuant to 37 CFR 1.702(b) is based on a national stage commencement date of October 2, 2006. As the expiration of the 30-month period pursuant to 35 U.S.C. 371(b) fell on a Sunday, the period expired on the subsequent business day. See PCT Rule 80.5. Accordingly, the commencement date is Monday, October 2, 2006. Thus, the period of delay is 382 days, counting the number of days beginning on October 3, 2009, the day after the date three years after the date the national stage commenced, and ending on October 19, 2010, the day before the date a request for continued examination was filed.

Further, 37 CFR 1.703(a)(1) states that the period of adjustment for Office delay is the number of days, if any, in the period beginning on the day after the date that is fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first. The fourteen month period under § 1.703(a)(1) is calculated from the date of the fulfillment of the requirements of 35 U.S.C. 371.

The priority date in this application is April 1, 2004. Applicants did not file an express request under 35 U.S.C. 371(f). Accordingly, the date which is 30 months from the priority date is October 1, 2006. As October 1, 2006, fell on a Sunday, the commencement date is shifted to October 2, 2006. See PCT Rule 80.5. Additionally, as applicants completed all 35 U.S.C. 371 requirements on filing the national stage prior to commencement, the completion date is also shifted to October 2, 2006.

Accordingly, the period of adjustment under 37 CFR 1.702(a)(1) is the period beginning on December 3, 2007, the day after the date fourteen months after the date of completion of all requirements under 35 U.S.C. 371. An office action was mailed on July 14, 2009, fourteen months and 590 days after the date after the date after the application completed the requirements

of 35 U.S.C. 371. The period of adjustment under 37 CFR 1.702(a)(1) is therefore 590 days rather than 591 days. The 591 day period of adjustment for Office delay will be removed and a 590 day period will be entered.

The patent term adjustment at the time of issuance of the patent is 945 days (590 days of Office delay + 382 days of three years delay - 0 overlapping days - 27 days of applicant delay).

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136. See 37 CFR 1.323(a)(4).

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by nine hundred forty-five **(945)** days.

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood  
Senior Petitions Attorney  
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT : 7,868,873 B2

DATED : Jan. 11, 2011

DRAFT

INVENTOR(S) : Palay et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[\*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 582 days.

Delete the phrase "by 582 days" and insert – by 945 days--